

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**M & J BUS, INC.**

**and**

**Case No. 01-CA-110383**

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1459**

*Rick Concepcion, Esq., for the General Counsel.*

*Kevin J. Greene, Esq. (Halloran & Sage LLP),  
Hartford, CT., for the Respondent.*

*Jillian M. Ryan, Esq. (Pyle Rome Ehrenberg, PC),  
Boston, MA, for the Union.*

**DECISION**

**Statement of the Case**

**STEVEN DAVIS, Administrative Law Judge:** Based on a charge, a first amended charge, and a second amended charge filed, respectively, on July 31 and September 26, 2013, and on April 30, 2014 by United Food and Commercial Workers Union, Local 1459 (Union or Local 1459), a complaint was issued against M & J Bus, Inc., (Respondent or Employer) on April 30, 2014.

The complaint alleges, essentially, that the Respondent is a successor employer to First Student, Inc., a company which had performed school bus transportation of students for the Suffield Public Schools in Suffield, Connecticut.

The complaint further alleges that, until June 30, 2013, the Union had been the exclusive collective-bargaining representative of the unit employed by First Student, and that it had a collective bargaining agreement with First Student which ran from September 1, 2011 through August 31, 2015.

It is alleged that when the Respondent took over the school bus operation in Suffield, it operated the business previously performed by First Student in basically unchanged form and since about August 27, 2013, has employed as a majority of its employees, individuals who were previously employed by First Student.

The complaint also alleges, in the alternative, that but for its unlawful refusal to hire employees Deborah Eheander and Peggy Nadeau, the Respondent would have employed as a majority of its employees at Suffield, individuals who were previously employees of First Student.

The complaint further alleges that the Respondent refused the Union's request that it recognize and bargain with it, and that it has, since about August 27, 2013, established rates of pay, benefits, hours of work and other terms and conditions of employment of the unit employees which varied from the terms in the contract with First Student without prior notice to

the Union and without affording the Union an opportunity to bargain with the Respondent regarding such conduct.

The Respondent's answer denied the material allegations of the complaint, and on June 24-26, and July 7, 2014, a hearing was held before me in Hartford, Connecticut. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following:

## **Findings of Fact**

### **I. Jurisdiction and Labor Organization Status**

The Respondent, a Connecticut corporation with its principal office located at 130 Ingham Road, Old Saybrook, Connecticut and facilities located throughout Connecticut including Suffield, Connecticut, is engaged in providing local school bus transportation. During the past 12 months, the Respondent derived gross revenues in excess of \$250,000, and purchased and received at its Old Saybrook facility, goods valued in excess of \$50,000 directly from points outside Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and(7) of the Act. The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### **II. The Alleged Unfair Labor Practices**

#### **A. Background**

Historically, the Suffield Public Schools contracted with school bus companies to transport school children to its schools in the Suffield, Connecticut school district.

From 1999 to about 2005, Laidlaw Transportation held the contract with the school district. In about 2005, Laidlaw was purchased by First Student, Inc. The Union had a contract with Laidlaw and then with First Student pursuant to which it represented the school bus drivers.

The collective-bargaining unit set forth in the most recent contract between First Student and the Union, and also alleged as an appropriate unit in the complaint is as follows:

All regular School Bus Drivers, Spare Drivers and Trainers employed by the Employer at its facilities located in Suffield, Connecticut, excluding all office, clerical and maintenance employees, dispatchers, casuals, managers and supervisors as defined in the Act.

A "regular driver" has a regularly assigned run in the mornings and afternoons, picking up children from their homes in the morning and transporting them to school, and, in the afternoon, picking them up from school and taking them home.

A "spare driver" reports to work each day but does not have a regular assignment. When the spare driver arrives at the yard, he is given an assignment to drive whatever bus needs to be driven if, for example, a driver is absent that day.

## B. The Bidding Process for the Transportation Contract

Sometime in early 2013, the Suffield Public Schools issued an invitation to bid on its bus contract for the school year September, 2013 to June, 2014. The bid specifications, which the Employer conceded being required to follow, included the following provision:

The services included in these specifications are currently being provided by contracted employees. The CONTRACTOR shall provide preferential hiring, for those positions that may exist, to current contract employees working in the District who so choose to apply for driving and who meet the CONTRACTOR's employment requirements.

Michael Collins, the vice president of operations of the Respondent, was aware, when he submitted a bid, that the Union represented the First Student employees who serviced the Suffield routes. He asked the Union for a copy of its current contract with First Student and for the seniority list of employees. The Union provided the contract but not the seniority list.

The Respondent was the low bidder, and on April 10, 2013,<sup>1</sup> it was awarded the contract. First Student shop steward Eheander, by emails and at a Suffield Public School meeting urged the school board to ask the Employer to “show preference to the drivers who currently serve the town...” and “encourage M & J Bus Company to hire the majority of our yards drivers, so that our union remains intact.” There was no evidence that the Respondent received or had notice of these emails or of Eheander's comments at the meeting.

## C. The Interview and Hiring Process

About one week after being awarded the contract, Collins gave employment applications to Becky Connor, First Student's Suffield terminal manager. She distributed them to the unit employees. With the exception of Cynthia Delisle and James DiFranco, to be discussed below, Connor was not asked to, and did not advise the Respondent as to the driving abilities of the drivers, or for recommendations as to who to hire or not hire. Collins did not ask her to withhold applications from those who she believed were unfit for employment with the Employer.<sup>2</sup>

The Respondent interviewed and hired employees from four sources:

1. The former First Student drivers who worked in Suffield.
2. Respondent's employees who transferred from its Farmington yard.
3. Respondent's employees who performed Suffield routes from the Stafford Springs yard.
4. Outside hires – employees who had never worked for the Respondent.

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<sup>1</sup> All dates hereafter are in 2013 unless otherwise stated.

<sup>2</sup> In June, the Respondent mailed reference forms to First Student concerning the drivers. First Student did not complete the forms.

### D. The Hiring Criteria

It was stipulated that the Respondent did not refuse to hire any First Student employee or anyone based on the individual's driving record. As testified by the Respondent's managers,  
5 all the drivers interviewed were qualified to operate its school buses.

Collins testified that he sought to hire the First Student employees since the school bus industry is competitive in its effort to attract and hire drivers. In fact, Collins stated that the Employer's strategy is to attempt to hire good drivers from other bus companies. He noted that  
10 hiring a new driver is time consuming because it takes three to four months to have a person licensed as a new bus driver. Accordingly, hiring a licensed driver from another bus company is a "huge advantage" and saves the cost of training that individual.

Collins stated that in considering the applicants, he wanted qualified drivers. He  
15 especially considered their length of service with prior employers, the school bus routes they drove, and their "disposition" – whether they had problems with their routes or the children they drove. Eheander quoted Collins as saying that, assuming that a driver had a good rapport with the students, it is best if the driver operated the same run as long as possible.

The Respondent's managers stated that they valued those First Student applicants who  
20 wanted to keep the same route they had the prior year since they would be familiar with the route, the parents and their children. The managers sought those who had driven a "number of years" in Suffield. "Consistency," remaining on the same route, was deemed to be important.

Indeed, Cynthia Delisle, the Respondent's driver/dispatcher stated that, upon their hire,  
25 the former First Student drivers were offered the same runs at the Employer that they had at First Student. The bus routes operated by the Respondent were same as those run by First Student.

After selecting their routes, the drivers operated the same runs for the entire school year.  
30 The Respondent's drivers from other yards were offered the runs which remained after the former First Student drivers had selected their runs. Collins thus achieved his goal of having a "smooth transition" in the operation from First Student to the Employer.

Collins testified that another factor in deciding who to hire among the First Student  
35 drivers was the wages earned by those workers. In order to save money, he sought to hire the least senior employees, those who were earning the lowest wages. He used the First Student seniority list supplied to him by Connor for that purpose.

The Respondent's managers who participated in the hiring process were admitted  
40 supervisors Marie Irizarry, the Respondent's safety director, and Lori Knight, its office manager/terminal manager. They testified that they sought employees who were happy at work, were "upbeat," had a "positive attitude," and were "team players" who could get along with management and their co-workers. Knight stated that she sought those drivers who she  
45 believed would "fit into our program, and would "conform to the way the [Employer] did things... and be willing to learn new policies, procedures and, perhaps, new rules."

### **E. The Interviews with First Student Employees**

Interviews were conducted with those First Student employees who submitted applications. Of the 28 First Student employees given applications, 26 applied.<sup>3</sup>

The interviews of First Student employees took place on April 30 and May 2 with managers Irizarry and Knight. Interviews with two applicants were conducted at the same time with Irizarry and Knight speaking separately with the applicants at the same table. Collins was present during the interviews but just answered any questions the candidates had.

A questionnaire was given to the prospective employee. The applicant was asked to identify her current routes, whether she wanted to keep her routes during the upcoming school year, whether she worked the previous summer, a description of her attendance record, whether she was “endorsed” (authorized ) to drive a bus with air brakes, her current rate of pay, how long she had driven in Suffield, whether she had ever tested positive on any pre-employment drug test for any employer, whether she was a veteran, and “what are some things you dislike most about your current working conditions.” Finally, the questionnaire asked if the applicant had any questions.

Irizarry and Knight wrote on the questionnaire the candidate’s oral answers to the questions. Collins made notations, at times, of comments made by the interviewees about which he was concerned and which he considered important. Those comments played a role in his decision to hire the candidate. None of the interviewers asked employees about the Union. Some candidates mentioned the Union, as set forth below.

I have considered the testimony that, following the interviews, no employees complained about the interview process, the questions that were asked, or how they were treated during that process.

Following the interviews, Collins, Irizarry and Knight discussed all the interviewees with the purpose of determining who they thought would be “team players,” who had good attitudes, and who they believed “may bring a lot of drama to the yard which we don’t need.”

Irizarry and Knight gave their opinions as to whether a particular prospective employee should be hired but the final decision was made by Collins.

### **F. Offers of Employment to the former First Student Employees**

On about June 7, the Respondent offered employment to 16 former First Student drivers. They are Kristine Burchell, Michelle Cormier, Cynthia Delisle, John Dew, James DiFranco, Crystal Duguay, Ina Edwards, Lorraine Grano, Sylvia Guyette, , Angela Jones, Brenda Judkins, Jennifer Percoski, Audrey Perkins, John Shepard, Teri Siskos and Brenda Wascholl. Siskos declined to accept the position offered.

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<sup>3</sup> Doreen Grout and John O’Connell did not apply for work with the Employer. A list of employees employed by First Student at the Suffield yard was received in evidence. Dated July 22, 2013, it bore the names of 28 employees including that of Delisle. Union president Daniel Clifford and Eheander testified that those listed were employed at that yard as of June, 2013, the end of the 2012/2013 school year. G.C. Exhibit 3.

On the same date, letters of rejection were sent to 9 former First Student drivers. They are Leroy “Spunk” Coburn, Kathy Delaney, Pamela Dulude, Eheander, Stephanie Gamache, Jean Goda, Nadeau, David Salisbury, Fred Shaw, and Theresa Yeltema. After Siskos declined the offer of employment, it offered a position to Goda.

As to Shaw, shortly after the Respondent was awarded the contract, Collins asked Ed Basile, the Suffield Public Schools manager whether there were any drivers who he should not hire. Basile mentioned Fred Shaw, who had been driving for “100 years” and who he described as a “cranky old man.”

Of those initially rejected, the Respondent later offered employment to Coburn, Delaney, Dulude, Salisbury and Shaw. Only Coburn accepted the offer. The others declined.

Collins stated that he did not hire all the former First Student drivers because the Employer had too many applicants, however he later testified that he needed drivers as of June 27 “because people backed out.” At that point, obviously, the Respondent needed additional drivers but it did not contact former First Student stewards Eheander and Nadeau.

Ultimately, of the 26 former First Student drivers who applied, only four were not offered employment: the two stewards, Eheander and Nadeau, Stephanie Gamache and Theresa Yeltema. Collins testified that he did not hire Gamache because she said at her interview that she hated every aspect of her job. He did not hire Yeltema because, at her interview, she demanded to know immediately whether she would be hired. Collins could not give her an answer and he therefore deemed her to be disqualified.

On August 27, the first day of school, 16 former First Student drivers began work for the Respondent driving the Suffield bus routes. They are: Kristine Burchell, Michelle Cormier, Cynthia Delisle, John Dew, James DiFranco, Crystal Dugay, Ina Edwards, Jeanne Goda, Lorraine Grano, Sylvia Guyette, Angela Jones, Brenda Judkins, Jennifer Percoski, Audrey Perkins, John Shepard, and Brenda Wascholl.

## **G. The Refusal to Hire the Two First Student Shop Stewards**

### **1. Debbie Eheander**

Debbie Eheander and Peggy Nadeau were the two shop stewards for the Union at First Student. Both applied for jobs with the Respondent but neither was offered employment or hired.

Eheander was employed for 11 years as a driver servicing the Suffield school bus routes. She was a shop steward for about 5 years, from 2008 until the end of the school year in June, 2013 when First Student’s contract ended.

Eheander’s interview questionnaire indicated that she worked the past summer and wanted to keep that run, and the same routes for the following school year. Her attendance was good, she was air brake endorsed, and had driven Suffield routes for 11 years. She had never tested positive in a drug test. Eheander’s answers were deemed “positive” by Knight.

In answer to a question on her questionnaire, Eheander said that there were “a lot of things” she disliked most about her current working conditions. Collins testified that Irizarry asked Eheander what she did not like about the working conditions but Collins did not know how

she replied. Nevertheless, Collins disqualified her from employment “based on that answer and that answer alone,” explaining that he had a large pool of applicants to choose from.

Irizarry first testified that she did not recall what Eheander said about not liking the job, but testified that she was not sure whether Eheander would be a “team player that we were looking for.” Later, Irizarry stated that Eheander told her that she was not happy with manager Connor, and made an “unfavorable” comment about Connor. Collins and Irizarry testified that those comments were considered in making their decision whether to hire her.

Irizarry explained that it is very important that employees “get along” with their manager so that its business operated smoothly. However, Eheander denied saying during the interview that she had differences with Connor.

Collins, who testified that he knew that Eheander was a shop steward since she told the interviewers that fact, which was recorded on her application and questionnaire. However, Eheander’s status as a shop steward is not mentioned on either document and Eheander credibly denied mentioning that at the interview. Further, Irizarry stated that the topic of the Union did not come up during their interview.

Eheander testified that during her interview she heard applicant Dulude ask whether Collins or the Respondent would recognize the Union. Collins replied that he wanted to hire qualified candidates “and if the number of qualified candidates from Suffield was whom he hired and he had to recognize the Union, then so be it, he would.”

Collins testified that he liked Eheander and wrote “like” on her questionnaire, and thought that she was “okay.” Irizarry thought that she seemed “upbeat.”

On May 10, Eheander sent an email to Collins asking if he hired Connor as a manager/dispatcher, adding that “we are getting quite a bit of contradictory information.” Collins did not reply. Eheander stated that she sent the note because Connor told certain First Student employees that she had been hired by the Respondent, but told others that she had not been hired. Eheander sought the information from Collins because she believed that Connor was not a truthful person.

## 2. Peggy Nadeau

Nadeau worked as a school bus driver at First Student for 4 years. She served as a shop steward during her final year of employment. Nadeau’s questionnaire indicated that she wanted to retain the same routes for the next school year. Her attendance was good, she was air brake endorsed, and had driven Suffield routes for 4 years. She had never tested positive in a drug test. All those answers were deemed “positive” by Irizarry. She also told the interviewers that she wanted to drive a bus in Suffield because her children attend school there.<sup>4</sup>

Nadeau denied telling the interviewers that she was a shop steward and they did not ask her if she was. Nevertheless, Collins wrote the words “union steward” on her questionnaire following the interview.

Nadeau asked whether the drivers would be paid the same rate they received at First

<sup>4</sup> It is a unique benefit for drivers whose children attend the Suffield schools to drive a route, as Nadeau did, in which she drove her children to and from school.

Student, and whether there would be “a union” at the Respondent’s facility. She quoted Collins as responding that he would try to pay the same rate, and that he “didn’t need a union in the Suffield yard.”

5 Nadeau commented on her questionnaire that “management” was a thing that she most disliked about her current working conditions, specifically telling the interviewers that she did not like working for Connor and did not want an offer of employment if Connor would be working for the Employer. She regarded Connor as untruthful and untrustworthy.

10 Irizarry recalled that Nadeau said that she “was not crazy” or happy about the current management, referring to manager Connor, the person who the Respondent had planned to hire as the dispatcher at Suffield.

15 Collins testified that he did not hire Nadeau because she did not like working for Connor and, at that time, Connor had been hired by the Respondent as its dispatcher. However, in late June, he became aware that Connor refused his offer of employment, and at that time he needed drivers. Nevertheless, he did not offer Nadeau a position. His reason was that he did not believe that Connor was difficult to work with, and therefore he was of the opinion that Nadeau had a “problem with management in general.” Collins broadly stated that he would  
20 disqualify any applicant who identified Connor as someone they disliked and who he had an issue with.

However, as set forth below, driver DiFranco, who also told Collins that he disliked Connor, was hired.

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### **3. Other Drivers’ Interview Comments Regarding Connor or the Union**

Former First Student drivers John Dew, James DiFranco and Teri Siskos were also interviewed. Interviewer Knight recorded that, in answer to the question “what are some things  
30 you dislike most about your current working conditions,” Dew answered “union – does not like.” Knight stated that Dew commented that he could “take it or leave [the Union]” and that it did not matter to him. Dew was hired.

35 James DiFranco commented that his greatest dislike at First Student was Becky Connor, about which he was “adamant.” Apparently the feeling was mutual, as Connor told Collins that he probably should not hire DiFranco. Collins also testified that DiFranco told him that he did not like the union. His reason for his dislike was that he believed that Eheander and Nadeau were “aggressive” and he believed that they were trying to “run the company.” Di Franco was hired.

40 Teri Siskos commented that she “does not want union” and that she did “not care for yard drama” which Knight defined as personal issues or gossip between drivers. Siskos was offered a job but declined.

### **H. Employees Transferred from the Respondent’s Farmington Yard**

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The Employer operated a bus yard at Farmington, Connecticut which serviced the Granby Public Schools contract.

50 Of the employees who began work on August 27, five were transferred from the Respondent’s Farmington facility. They are Deborah Crosset, Ronald Lemay, Karen Mirick, Kim Prevost, and Oscar Redway.



## I. The Alleged Temporary Assignments from Stafford Springs

The Respondent also operates a school bus terminal in Stafford Springs, Connecticut. Local 671, International Brotherhood of Teamsters, represents a unit of about 40 drivers at that yard and has a contract with the Employer covering the drivers at that facility. The contract also provides that a “regular school bus driver is an employee assigned to a regular school bus run or an employee who is assigned as a regular stand-by driver who must report to the terminal each day.”<sup>5</sup>

As is typically done just before the start of a new school year, a seniority list was posted in the Stafford Springs yard for the drivers to bid on routes for the new year. In about August, 2013, an additional list was posted, asking drivers to bid on routes to be run for the Suffield Public Schools.

Four drivers bid on and accepted the assignments: Norma Faber, Cindy Lehmann, Alicia Lloyd, and Lynn Morrison. Each is a regularly assigned Stafford Springs driver, working full time in the Stafford Springs facility. Each is listed on the Suffield run sheet as being assigned to runs for Cheney Tech, Valley West, Grace Webb, and CCGC, all of which are special education routes run for the Suffield Public Schools. Local 671 agent Tony Lepore stated that none of those runs were typically run from the Stafford Springs yard.

The four employees, while performing the Suffield runs, maintained their seniority on the Stafford Springs seniority list, and earned the same pay rates and benefits under the contract between Local 671 and the Employer. They paid dues to Local 671 which were remitted by the Respondent to Local 671. They enjoyed unbroken seniority under that contract at the Stafford Springs facility.

Collins testified that the expectation of the four drivers, from the Employer’s point of view, was that when they bid for the Suffield work they would continue to drive those routes through the end of that year or as long as those routes existed.

However, he stated that he expected the workforce in Stafford Springs to shrink due to retirements or voluntary quits and that he would “bring them back into the fold in Stafford Springs and replace them in Suffield.”

Collins stated that he relocated a vehicle from Suffield and parked it in the Stafford yard. The four drivers reported to work in Stafford, punched a time card there, drove in a company vehicle from Stafford to the student’s home in Suffield, picked up the student, drove him to one of the special education programs, and then drove to Stafford where she clocked out. In the afternoon she punched in at Stafford, took the vehicle which was in the Stafford yard, picked up the student at his program and drove him home, and then returned to Stafford Springs where she clocked out.

Thus, it is apparent that the driver making these runs did not visit the Suffield yard at any time. All the vehicles in these runs were maintained at the Stafford Springs yard and not at Suffield, which did not have a maintenance facility.

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<sup>5</sup> The Respondent services 17 school districts. In the past 15 years, it has been awarded contracts with four school districts in which the bus company employees were represented by a union. In each of those districts, the Employer voluntarily recognized the union.

While on their Suffield run the drivers called the Suffield office if they had a problem. Any complaints from Suffield parents or administrators were directed to the Suffield office and were dealt with by Knight or Delisle who then spoke to the driver.

Bid sheets were posted at Stafford Springs. One stated that it was a “run up for temporary bid – Cheney Tech. run out of Suffield. 5:15 – 7:30 a.m., and 1:15 – 4:15 pm.”

Another sheet stated “temporary Suffield run up for bid. Am only, pm spare. Punch in at 5:00 am. Leave at 5:15. Take a car from here go to Suffield yard for the bus. Back to Stafford around 9:15.” Lepore stated that the Stafford drivers report to that facility each day and contractually have a start time in which they must report to that yard. They are then “on the clock” when they enter a company vehicle and drive to Suffield. They then return the company vehicle to Stafford and leave the facility.

A third sheet states “temp. bid. Female only per the Suffield BCE. Ben Bronz run for Suffield. Am 6:00 – 9:40 pm w/locks d/o for football then Ben Bronz. Leave yard 1:00 pm. Back 4:30.” A fourth sheet states “Suffield run up for temp bid with morning and afternoon times.”

Lepore stated that these sheets represent bids offered to Stafford Springs drivers, in seniority order, at that facility. The runs began on about August 28, one day after the start of the regular school year. The Suffield dispatch sheets for August 30, list the four drivers as “Stafford-Norma Faber,” “Stafford-Lynn Morrison,” “Stafford-Cindy Lehmann,” and “Stafford-Alicia Lloyd.” Collins stated that he listed the drivers as “Stafford” on the dispatch sheets because that was where those drivers came from.

Union agent Lepore testified that he first believed that the assignments to Suffield were permanent for the year. That position was supported by a grievance he filed in January, 2014, which grieved that Stafford work was being subcontracted to the Suffield yard. The remedy sought was to “maintain bid work in Stafford yard.”<sup>6</sup>

However, Lepore stated that he told Steven French, the Respondent’s manager, that he believed that the drivers would be given the work for the entire year on a “permanent temporary basis,” and when the work was completed they would return to Stafford Springs for the following year. Lepore testified that French “adamantly” and “repeatedly” told him that the Suffield runs were temporary and were “always meant to be temporary.”<sup>7</sup>

Collins testified that he had an “abundance of drivers” in Stafford Springs since the company lost two regular runs that year and one special education run the year before. The four routes were assigned to the Employer just before the school year began, and, accordingly, he added the four routes to service that assignment. He explained that, instead of laying off any Stafford Springs drivers, he offered those routes to the Stafford Springs drivers. Collins stated

<sup>6</sup> The grievance was resolved one month later with the parties agreeing to establish a work assignment in Stafford Springs called “Stafford Located Company Spare” pursuant to which a driver would report to Stafford Springs and be available to perform any assignment companywide.

<sup>7</sup> At the hearing I reserved decision on whether French was supervisor within the meaning of Section 2(11) of the Act. I find that he is. French is one of two district managers who report to Collins. Collins conceded that French, who is in charge of the Employer’s operations at three school districts, is responsible for hiring and firing and can independently assign work to employees. He oversees payroll and billing, and speaks on behalf of the Employer to the union and employees.

that there were employees at Stafford Springs who, because of the expected layoffs, would not have a position if they did not bid on the special education runs at Suffield.

In this respect, Lepore stated that in the Summer of 2013, Local 671 did not receive any notices that employees had been laid off from the Stafford Springs yard. He was not aware whether, that summer, the Respondent lost three routes in that facility. However, Lepore stated that in March, 2013, the Respondent lost routes in Stafford Springs. Collins conceded that the Employer did not provide any layoff notices to Local 671 regarding the Stafford yard, explaining that it was unnecessary to do so because the drivers were being laid off anyway for the summer.

Collins stated that the Respondent considered the four drivers, who had a regular run each day, as being permanently assigned to the Stafford facility, but permanently assigned to the Suffield routes which they performed until further notice.

Driver/dispatcher Delisle testified that as of the date of the hearing one year after these assignments were made, three of the four Stafford drivers, Faber, Lehman, and Lloyd, returned to Stafford Springs, and were not performing the special education runs for the Suffield Public Schools.<sup>8</sup> Delisle explained that “we needed them to fill those runs so Stafford’s drivers came down to help us. She was asked “was that on a temporary basis?” Her answer was “yeah, if we hired somebody else from Suffield, those runs would have gone up and they have.”

Delisle further testified that when the three left, they were replaced on their runs by drivers who were permanently assigned to the Suffield facility. Delisle added that Faber “knew it was temporary, if we had a driver that come in she wouldn’t have that run.” Delisle stated that such an expectation was also true for the three other Stafford-based drivers.

## **J. The Interview and Hire of Outside Applicants**

Collins stated that, by July 23, two weeks after offers of employment were made to the former First Student drivers, he “exhausted” the First Student list of employees, having made offers to all of them, except the four which included stewards Eheander and Nadeau. He then hired outside drivers, those who did not work for the Respondent at the time of their hire for the school year beginning August 27.

Indeed, even after the five transferees from the Respondent’s Farmington yard were hired, Collins found a need to hire additional drivers. This was because applicants who had accepted an initial offer of employment later withdrew their acceptance. The numbers of drivers offered positions and those expected to appear for work on the first day of school remained “fluid” through the summer.

The Respondent hired six outside applicants who are:

1. Leroy “Spunk” Coburn. The Respondent sent Coburn a letter on June 7, rejecting his application for employment. However, thereafter, it decided to hire him and on June 23, sent a reference letter to Coburn’s prior employer, Salter’s Express. Vice president James Salter replied, saying “just found out by your paperwork that he quit without notice. He lied about hand operation on June 24, 2013 (probably was driving camp run for you). Lied about hitting 2 buses at Rainbow Bus.” Salter stated that he

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<sup>8</sup> Morrison remained at Suffield.

would not rehire Coburn, and ended his note with the message “Good Luck!” Coburn was hired immediately by the Respondent. When asked why he hired Coburn, especially given the fact that, according to Salter, he lied about hitting two buses, Collins replied “he didn’t lie to me about it.”

- 5           2. Nikole Goodman, a First Student driver in Suffield who was on maternity leave at the time of her application with the Respondent.
3. Larry Levesque, a one-year First Student driver but not in Suffield.
4. Mark Livingston, a one-year employee of First Student, but not in Suffield.
- 10          5. Alexis Miskin-Ahmad, who ceased work as a driver for Respondent in 2011.
6. Marie Murphy listed on her application that she worked as a school bus driver but did not specify the name of the company she worked for or her length of service.

15           It must be noted that other outside applicants, none of whom had worked for the Respondent, were interviewed and offered employment. They are Jacqueline Darmofalski, Susan Mullins, and Hillary Sevigny. Darmofalski had worked as a driver for one year. Mullins had been employed for 5 months for First Student but not in Suffield, and Sevigny, for nearly one year for First Student, but not in Suffield. Neither Darmofalski, Mullins, nor Sevigny  
20           accepted the offers made by the Respondent.

#### **K. Cynthia Delisle**

25           Cynthia Delisle worked at the Suffield bus yard for 15 years through the end of the First Student contract. According to Becky Connor, the First Student terminal manager, Delisle drove a bus 50% of the time, and worked in the office, helping Connor by doing office work including dispatching, filing, and answering the phones the other 50%. She was a member of the Union at First Student.

30           Collins testified that, in April, 2013, after being awarded the contract for Suffield, he offered Connor the job as dispatcher, and she accepted. Thereafter, in late June, Connor told him that she accepted an offer with another company, and therefore withdrew her acceptance of the dispatcher’s job with the Employer.

35           Collins stated that he asked Connor if Delisle would be a capable dispatcher and Connor said she would. He called Delisle and offered her a job as dispatcher which she accepted.

40           Delisle testified that at her interview with the Respondent in late April, she told the interviewers that she was interested in a position as a dispatcher. In mid-July, she was offered a position as a dispatcher and she accepted.

45           Delisle works for the Respondent as a dispatcher and a bus driver. She stated that, as a dispatcher, she arrives early at the yard, before office manager Lori Knight arrives. Delisle ensures that all the drivers arrive and have their route sheets.

50           Delisle answers the phones, receiving calls from the Suffield school administrator, and drivers who call the office if they have an issue with an unruly child, or if a parent is not home when the child is being dropped off. She then calls the school administrator and, in the case of a misbehaving child, asks the school principal to meet the driver at the school. If the principal is not available Delisle meets the bus and speaks to the child. She asks the driver and the child to write an incident report, which she sometimes participates in. She then faxes the report to the school so that the matter may be resolved. If a parent is not home when the driver attempted to

drop the child off, the school administrator calls the parent and then advises Delisle when the parent will return.

5 She also receives a list of charters, or trips involving transporting children to outside activities such as athletic events or museums. She prepares a trip sheet, puts the listing of the trip on a board and issues them to the drivers. Included in the sheet are the pickup and drop off points, the name of the driver, and directions to the trip's destination. She also sends that information to the Employer's headquarters in Old Saybrook, Connecticut so that the school may be billed for the charter.

10 If a bus becomes disabled, the driver calls Knight or Delisle who call the Employer's mechanic. Either Knight or Delisle drives another bus to the scene and waits until the mechanic arrives or until it is towed.

15 Delisle does the payroll when manager Knight is not present. Her duties in this regard consist of arranging the drivers' time cards in alphabetical order, entering the information in a computer and sending it to Old Saybrook. If she notices that the time card is incomplete she asks the driver for an explanation. If the driver claims to have taken more time to complete a trip than she believes it should have taken, she asks for an explanation. She appears to accept the drivers' explanations: heavy traffic, an accident, a game took longer than expected, and then  
20 authorizes payment for the time claimed and processes that date into the payroll. If someone from Old Saybrook asks for an explanation, she informs the office of the reason for the extended time, and the amount claimed is paid.

25 Delisle also notes when children do not use bus transportation if they are sick or on vacation and sends that information to headquarters. The school district is not billed for the days in which children are not transported.

30 Delisle receives data from the school board regarding each child utilizing bus transportation. Such information includes the name, address, school, the grade level and the school to which they are transported. She then prepares a route sheet for each driver. She determines what buses the children will travel on and ensures that each bus is not overcrowded. That sheet contains the child's name and address, grade, and school. In completing this task, she uses the computer to find the names of children, their grades, the schools they are enrolled  
35 in and their parent's phone numbers.

Delisle gives applications to drivers who come to the office seeking jobs. She reviews their completed application to ensure that all the information called for is correct and complete. Occasionally she speaks to the applicant and "feels them out a little bit." She then gives the application to the safety director who is in charge of preemployment matters who also reviews it.  
40 The application is then sent to Old Saybrook which makes the decision to hire or not hire. Prior to the application being sent to headquarters, neither Delisle nor anyone else makes a recommendation or decision to hire or not hire the applicant.

45 Collins stated that Delisle, as the dispatcher, is the immediate supervisor of the drivers, with the dispatcher reporting to the terminal manager.

50 Delisle stated that she "disciplines" the drivers. When a parent complained that a child hit her child on the bus and the driver did not intervene, or that the bus did not stop to pick up her child, she asks the driver to speak with her after her run was completed. She meets with the driver in private and asks for an explanation. Delisle informs the school administrator of the reason given, for example why the bus was late in its run. She then calls the parent, thereby

resolving the issue between the driver, parent and school. In answer to a leading question from Respondent's counsel, Delisle stated that she resolves these issues using her own "discretion and judgment."

5 Delisle also stated that if she believed that the driver's conduct was inappropriate or he was absent too often for reasons of sickness, she spoke to the driver, explaining that if the illness was minor he should come to work as he was needed, and if necessary, leave after his morning run. If she found the need to speak to the driver a second time for the same reason, she "writes up the driver." In this connection, she tries to have the driver correct or conform his  
10 behavior to what is expected. For example, if a driver became hostile or angry with a child, she spoke with him privately and explained that he should speak to her instead of reacting to the child. She also advised the driver that he could speak to her about any issues he may have.

15 In this respect, Knight stated that she has Delisle counsel a driver on a particular issue of concern to the Employer before it becomes a matter requiring formal discipline. She considers counseling of a driver to be a form of discipline.

20 Although Delisle stated that at various times she has "written up" a driver, she conceded that she has not done so. Rather, Knight signed the disciplinary notice and Delisle, who was present during the discipline, signed as a witness.<sup>9</sup>

25 If office manager Lori Knight had an issue with a driver, she and Delisle discuss the matter including what discipline would be appropriate, and then speak to the driver about the issue. If this was a second occurrence the driver would usually receive written discipline. In this connection, Knight stated that Delisle serves as a liaison between her and the driver. Knight stated that Delisle may not grant time off without her approval.

30 As a driver, Delisle reports to work five days a week and operates a school bus as a spare driver four days a week. She drives when she is needed to replace a driver who was not at work. After completing her run she returns to the office and performs the work outlined above. In addition, Delisle stated that when an employee left his employment she was used as a "spare driver" to operate that driver's run until another driver was hired.

35 During the first month of school, September, 2013, Delisle drove the morning and afternoon school bus runs on 8 days, and the afternoon runs only on 4 days. Knight testified that when Delisle drove a bus, she worked in her capacity as a "spare driver."<sup>10</sup>

40 While driving a bus, Delisle continues to function as a dispatcher. Other drivers call Knight or her if Knight was not in the office. Such calls involved problems they are experiencing. If necessary, she will drive the bus to the curb and answer and deal with the call which may involve no parent being home to receive the child.

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45 <sup>9</sup> The General Counsel stated that he subpoenaed all disciplinary forms in which Delisle signed as the person authorizing the discipline. None have been produced.

50 <sup>10</sup> At the hearing, after I received in evidence the General Counsel's offer of the dispatch sheets from September which showed Delisle's 12 bus runs that month, the Respondent's counsel stated that he intended to offer all the run sheets for the school year, presumably to show that Delisle did not drive as often as she did in September. Those documents were not produced or offered in evidence. It is unnecessary to draw an adverse inference from the Respondent's failure to produce those documents, as requested by the General Counsel. Even according to Delisle's testimony, she drove four days a week.

At First Student, Delisle, who was a member of the bargaining unit, also worked as a spare driver with a regular run. If she was needed for an extra run to replace another driver, she did so. She also helped manager Connor in the office, performing many of the duties she performs at the Respondent. She arrived before Connor, answered the phone, did filing, and, in Connor's absence, checked that all the drivers reported to work, and that they returned from their runs. At the Respondent, Delisle is required to remain at the Suffield yard until all the buses returned. She did not have that responsibility at First Student.

The Respondent also argued that Delisle was a part of its management. Collins stated that he considers the dispatchers as part of the management team, and Delisle stated that she considers herself as part of management. On September 25, an important meeting was held at the Suffield Public Schools involving the Respondent's performance of its contract. Delisle did not attend that meeting. Knight explained that inasmuch as Knight attended, "someone" had to be in the office. Knight added that following the meeting, Delisle was not part of the action plan devised to address the issues discussed at the meeting.

In fact, Delisle drove two runs that day – in the morning and afternoon. In answer to the question "who was managing the yard" if Delisle drove that day, she stated that she would answer the radio if drivers called, but conceded that she could not perform the billing and dispatching duties while driving.

Delisle stated that she attended meetings with Suffield school administrators as a representative of the Employer. She met with school administrator Basile twice a week if he had any complaints about issues concerning the drivers such as a bus being late, or a parent complaint. At such times they discussed the matter, learned why the bus was late, and developed a plan to resolve the issue. She would then inform the driver of the course of action to be taken.

#### **L. Preferential Hiring**

The General Counsel argues that the Respondent did not offer preferential hiring to the former First Student applicants, as was required by the bidding specifications.

Collins understood that the bid specification's requirement that he provide "preferential hiring" to First Student employees who meet the Employer's hiring requirements, meant that he should "consider them first." He stated that he hired nearly half of his employee complement from the former First Student employees. The Respondent therefore argues that it did, indeed, give preferential treatment in hiring to those employees.

#### **M. The Demand for Bargaining and the Respondent's Refusal**

On July 19, Union president Daniel Clifford sent a letter to Collins stating that it was his understanding that the Respondent "has hired a majority of the school bus drivers who currently serve the Suffield, CT school district. Please consider this letter as a request for recognition and subsequent bargaining for the M & J Bus Company drivers serving the Town of Suffield, CT."

On July 23, Collins replied as follows:

In response to your letter of July 19, 2013, according to our records, of the 31 employees on the seniority list, for Suffield school bus drivers, only 14 drivers were hired for employment by our company. The majority of those on the seniority list were not

hired and we will, therefore, not be recognizing the union that previously represented the drivers.

#### **N. Terms and Conditions of Employment at the Suffield Yard**

The Respondent provided the same pay rate for those drivers who were employed by First Student at the Suffield yard. However, newly hired drivers were paid a different rate and did not receive benefits until they were employed for 60 days.

The health insurance plan covering employees under the First Student contract was different than the one that the Respondent instituted. The Respondent applied the health and life insurance plans in use at its other yards to the Suffield yard.

Other terms and conditions differed. For example, the Employer does not reimburse the employee for parking summonses received. The First Student contract provided for such reimbursements. Respondent provides a \$10,000 life insurance policy. The First Student contract had a \$20,000 policy paid by the employer. Further, the First Student contract provided that a driver who is on layoff due to a medical condition retains his assigned run for up to 125 working days. The Employer has no such protection. The First Student contract provides for bereavement leave of 3 days for certain relatives of the driver. The Respondent has a one day bereavement leave. The contract provided for bonuses for accident-free driving. The Respondent does not provide such bonuses.

#### **Analysis and Discussion**

The test for determining successorship under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972) is well established:

An employer, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a “substantial and representative complement,” in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a ‘substantial continuity’ between the enterprises.” *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 41-43 (1987).

The Board will normally assess whether an employer is a successor as of the time a union makes its demand for recognition and bargaining, provided the employer has already hired a substantial and representative complement of employees. See *MSK Corp.*, 341 NLRB 43, 44-45 (2004).

#### **A. The Appropriate Bargaining Unit**

The complaint alleges and the Respondent’s answer denies, that the appropriate unit is as follows:

All regular School Bus Drivers, Spare Drivers and Trainers employed by the Employer at its facilities located in Suffield, Connecticut, excluding all office, clerical and maintenance employees, dispatchers, casuals, managers and supervisors as defined in the Act.



This is the unit set forth in the collective-bargaining agreement between the Respondent and Local 671, Teamsters for the employees employed at the Employer's Stafford Springs facility. The Respondent has been a party to this contract for three years.

In addition, this unit is essentially the same as other units in the school bus industry. *Durham School Services, LP*, 360 NLRB No. 108, slip op. at 3 (2014); *Van Lear Equipment, Inc.*, 336 NLRB 1059, 1064 (2001). This unit is clearly an appropriate unit. The Respondent has not offered any evidence to refute its appropriateness.

## **B. The Substantial Continuity of Operations**

The determination whether a "substantial continuity" exists between the two companies includes "whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers." *Fall River Dyeing*, above at 43.

In *Fall River Dyeing*, the Supreme Court emphasized that in reviewing the facts pertaining to a successorship, the Board analyzes these factors primarily from the perspective of the employees—whether "those employees who have been retained will understandably view their job situations as essentially unaltered." 482 U.S. at 43. Although each factor must be analyzed separately, the totality of the circumstances is determinative.

Here, the business of First Student and the Employer are essentially the same – the transport of school children enrolled in the Suffield Public Schools to and from their homes to school classes and field trips. The drivers drive the same routes they drove at First Student, transporting the same students to and from the same schools. Essentially the same bus routes have been operated by both companies.

Indeed, the Respondent sought to retain the First Student drivers, and have them continue to drive their same routes because they were familiar with the route, the parents and the children. "Consistency" was important to the Respondent in deciding who to hire, as Collins sought a "smooth transition." The Respondent thereby sought to maintain continuity in its operations by hiring as many of the First Student's drivers as it could.

There are some differences in the conditions of employment of the Respondent's employees. The supervisors employed by the Respondent - Collins, Knight and Irizarry are different than those employed by First Student. The buses themselves and the location of the yard where the buses are parked is different than the yard utilized by First Student. However, the same types of buses, large and small, are still being used. In addition, certain of the benefits received differ from those received from First Student.

Nevertheless, viewed from the employees' perspective, the drivers are performing the same work that they performed as First Student employees – driving the same routes and children to and from Suffield public schools by school bus and van. *Van Lear Equipment, Inc.*, above, at 1064. Accordingly, their "job situation" has not changed to the extent that they would change their attitudes about being represented. *Derby Refining Co.*, 292 NLRB 1015 (1989).

I accordingly find and conclude that there is a substantial continuity of operations between that of First Student, the predecessor, and the Employer.

### **C. The Demand for Bargaining and a Substantial and Representative Complement of the Respondent's Employees**

5           “Where a union demands recognition from a prospective successor employer before that  
successor has hired a substantial and representative complement of employees, the union's  
demand is deemed to be a continuing one and the successor's bargaining obligation matures  
once it hires a substantial and representative complement.” *MSK Corp.*, 341 NLRB 43, 44  
(2004).

10           The Respondent is a successor of First Student if a majority of the Employer's  
employees in its bargaining unit were former employees in the First Student bargaining unit on  
the day that the Respondent began operating with a “substantial and representative  
complement of its workforce.

15           The *Fall River* Court approved the Board's determination of whether a substantial and  
representative complement has been achieved, depending on “whether the job classifications...  
were filled or substantially filled and whether the operation was in normal or substantially normal  
production.” 482 U.S. at 49.

20           Here, the most appropriate date for determining whether a representative complement  
has been achieved is the date the Respondent began its normal operations. *Paramus Ford*, 351  
NLRB 1019, 1027 (2007). That date is August 27, the first day of school for the Suffield Public  
Schools. That was the employees' first day of work, and was the date on which the Respondent  
25           was required to have its operation up and running so that the children could attend their first day  
of school.

30           The Union made a proper demand for bargaining on July 19 which was refused by the  
Respondent. However, this demand was made prematurely inasmuch as the Respondent had  
not necessarily hired a representative complement of employees by then. It continued  
interviewing drivers through August inasmuch as employees who had once agreed to be  
employed later withdrew their acceptance.

35           However the Union's demand for bargaining, although made prematurely, is considered  
a “continuing demand” and remains in force until the moment when the employer attains a  
“substantial and representative complement.” *Fall River*, above, at 52. Accordingly, the Union's  
demand for bargaining matured on August 27.

### **D. The Union's Majority Status in the Unit**

40           The Union's majority status must be measured as of August 27. The status of Cynthia  
Delisle and the four Stafford Springs employees performing services for the Suffield Public  
Schools are disputed.

#### **1. Cynthia Delisle**

##### **a. Inclusion in the Unit**

50           The appropriate bargaining unit alleged in the complaint includes drivers and spare  
drivers, and excludes dispatchers. The Respondent argues that Delisle should be excluded from  
the unit because she is a dispatcher and a statutory supervisor. The General Counsel asserts  
that Delisle should be included in the unit, and that she is not a statutory supervisor.

As the Board held in *Columbia College*, 346 NLRB 726, 28-729 (2006), “an employee with job responsibilities encompassing more than one position [is] a dual function employee....” The Board includes such employees in an appropriate unit if they have a community of interest with the petitioned for unit. The test is whether they “regularly perform duties similar to those performed by unit members for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit.” *Berea Publishing Co.*, 140 NLRB 516, 519 (1963).

As set forth above, Delisle worked as a spare driver four days a week. She reported to work each day and substituted for drivers who were absent. She drove morning and afternoon runs. Before and after her runs she worked in the office, assisting manager Lori Knight.

In *Alpha School Bus Co.*, 287 NLRB 698, 699(1987), a case similar to the instant one, the Board found that an employee worked a majority of her time as a substitute school bus driver, a unit classification, and spent the rest of her time as a dispatcher between her morning and afternoon runs. In that capacity she checked drivers in and distributed keys to the drivers. She made certain that drivers left on time and recorded those who did not appear for work. She had no disciplinary authority. She also answered the phone and prepared route sheets. The Board held that she worked a sufficient amount of time as a substitute driver and included her in the unit.

Delisle was included in the unit of regular drivers and spare drivers under the First Student contract. There is no reason to exclude her from the same unit at the Employer where she is performing the same duties

I find that Delisle should be included in the unit. She works a substantial amount of time, four days a week, as a spare driver substituting for absent drivers. She operates routes as other drivers in the unit do. She clearly has a sufficient community of interest with the unit of regular and spare drivers.

#### **b. Delisle’s Supervisory Status**

Section 2(11) of the Act, defines “supervisor” as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

A party seeking to exclude an individual from the category of an “employee” has the burden of establishing supervisory authority. That party must establish such status by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006). “Purely conclusory evidence does not satisfy that burden.” *Lynwood Manor*, 350 NLRB 489, 490 (2007). The exercise of independent judgment with respect to any one of the factors set forth in section 2(11) establishes that an individual is a supervisor. However, not all decision-making constitutes the independent judgment necessary to establish that an individual is a statutory supervisor. The Board has cautioned that the supervisory exemption should not be construed too broadly because the inevitable consequence of such a construction would be to remove individuals from the protections of the Act. *Providence Alaska Medical Center*, supra, 320 NLRB 717, 725 (1996); *Northcrest Nursing Home*, 313 NLRB 491, 491 (1993).

The Respondent argues that Delisle engages in supervisory functions through her counseling of drivers. Counseling consists of her speaking to the driver if she believes that he has acted improperly toward a student or parent, is continually late, has failed to pick up a student, or if she believes that he has taken too much time in completing a driving assignment or has submitted an incomplete timecard.

In engaging in these discussions, Delisle attempts to have the driver correct his attitude and conform his behavior to what is expected. In this regard, no discipline is imposed. Her discussion with manager Knight in deciding what course of action to take regarding a driver does not establish that she disciplines employees. She is present when manager Knight issues written discipline to the driver and signs the discipline form as a witness. However, the evidence does not establish that she actually disciplines employees, or has the authority to do so.

Similarly, “warnings that simply bring the employer’s attention to substandard performance without recommendations for future discipline serve a limited *reporting* function, and do not establish that the disputed individual is exercising disciplinary authority.” *Willamette Industries*, 336 NLRB 743, 744 (2001). Here, there is no evidence that the unnamed drivers’ malfeasance and Delisle’s counseling of them was brought to the attention of Knight or any other supervisor.

Moreover, there is no evidence that Delisle recommended that the drivers be disciplined. “The authority to issue verbal reprimands is, without more, too minor a disciplinary function to constitute supervisory authority.” Here, there was no evidence that even if Delisle’s counseling may be considered a verbal warning, that such a warning had any effect on the unnamed driver’s job status or tenure. *Hausner Hard-Chrome of KY., Inc.*, 326 NLRB 426, 427 (1988). *Republican Co.*, below, slip op. at 5, citing *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999). There is similarly no evidence that Delisle recommended discipline at any time.

Even if Delisle’s counseling is considered discipline, issuance of such discipline on apparently isolated and sporadic instances – there was no evidence of the extent of the counseling given or the names of the drivers involved – did not transform her into a statutory supervisor. *Shaw, Inc.*, 350 NLRB 354, 357 and fn. 21 (2007); *Franklin Home Health Agency*, 337 NLRB 826, 829 (2002); *Chevron U.S.A.*, 309 NLRB 59, 61 (1992).

Delisle met with the Suffield Public Schools administrator in an effort to answer questions or complaints concerning the Respondent’s performance of its contract. She routinely followed up by determining the nature of the issue – why the bus was late, and she developed a plan to resolve the issue. She then informed the driver of the course of action to be taken. No specifics were given as to what kinds of plans she developed or implemented, or the effect on the driver of her actions.

As recently affirmed in *Republican Co.*, 361 NLRB No 15, slip op. at 3-7(2014), managerial employees are those who “formulate and effectuate high-level employer policies or ‘who have discretion in the performance of their jobs independent of their employer’s established policy.’” She must represent “management interests by taking or recommending discretionary actions that effectively control or implement employer policy.”

Here, there is no evidence that Delisle formulates, determines or effectuates the Respondent’s policies. She performs routine tasks as its part-time dispatcher, working under the direction of manager Knight.

Delisle’s other tasks, including giving an application to a job applicant, answering the

phone, taking calls from drivers and contacting the school administrator, preparing trip sheets, arranging drivers' time cards and sending payroll information to Old Saybrook, are all routine jobs which an office clerical would be expected to perform, and which do not require the use of independent judgment.

5

### c. Conclusion

I find that Delisle should be included in the appropriate bargaining unit with the drivers and spare drivers. I also find that she is not a managerial employee or a supervisor within the meaning of Section 2(11) of the Act.

10

## 2. The Stafford Springs Drivers

The General Counsel argues that the four Stafford Springs drivers were temporarily assigned to perform Suffield routes and that they should not be included in the unit. The Respondent asserts that they were permanently assigned to Suffield and should be counted as unit members.

15

The contract between Local 671 and the Respondent covers employees who "must report to the [Stafford Springs] facility each day. The drivers at issue here reported to that facility each day. Moreover, they were covered by the terms and conditions of that contract.

20

Three bus routes, as posted, stated that they were for "temporary" runs or bids. I credit Local 671 official Lepore's testimony that Respondent's supervisor and district manager French "adamantly" told him that the runs were temporary and "always meant to be temporary." French did not testify. The dispatch sheets identify the four drivers as "STAFFORD-norma faber" etc.

25

Indeed, although Collins testified that he expected the drivers to operate the routes through the end of the school year, he further stated that he expected the workforce in Stafford Springs to shrink due to retirements or voluntary quits and that he would "bring them back into the fold in Stafford Springs and replace them in Suffield." This establishes that Collins believed that, at some point, the four drivers would return to Stafford Springs, and their Suffield routes would be run by Suffield drivers.

30

I further credit Delisle's testimony that three of the four drivers returned to Stafford Springs and were replaced by Suffield drivers. She gave credible testimony that the four drivers "knew" the runs were temporary, and that if a Suffield driver came in the four drivers would not have their runs. I find that the drivers had a reasonable expectation of returning to the drivers' unit at Stafford Springs.

35

I cannot credit Collins' testimony that the four drivers expected to be laid off and accepted the Suffield bids because they would not have a job. There was no credible evidence that Stafford Springs bus routes were lost during the summer preceding the August 27 start of the school year.

40

I find that this was a temporary transfer, and that the four drivers retained a strong community of interest with the other unit employees at Stafford Springs. *Arbors at New Castle*, 347 NLB 544, 547, 548 (2006). Thus, they apparently never visited the Suffield facility. They picked up their vehicle at the Stafford Springs yard and drove the students to and from school. They clocked in and out at the Stafford Springs facility and returned their vehicle to Stafford Springs. They worked pursuant to the terms and conditions of the contract with Local 671, IBT, under which they enjoyed unbroken seniority.

45

50

I accordingly find and conclude that the four Stafford Springs drivers were temporary transfers to Suffield and should not be included in the appropriate unit sought here.

### 5 3. Conclusion

I find that as of August 27, the appropriate unit consisted of 27 employees, as follows:<sup>11</sup>

- 10 • Sixteen employees formerly employed by First Student:  
Kristin Burchell, Cynthia Delisle, John Dew, James DiFranco, Crystal Dugay, Ina Edwards, Jeanne Goda, Lorraine Grano, Sylvia Guyette, Michelle Cormier, Angela Jones, Brenda Judkins, Jennifer Percoski, Audrey Perkins, John Shepard, and Brenda Wascholl.
- 15 • Five employees transferred from the Respondent's Farmington facility:  
Deborah Crosset, Ronald Lemay, Karen Mirick, Kim Prevost, and Oscar Redway.
- 20 • Six outside hires:  
Leroy Coburn, Nikole Goodman, Larry Levesque, Mark Livingston, Alexis Miskin-Ahmad, and Marie Murphy.

Of those 27 employees, 16 were formerly employed by First Student. I accordingly find and conclude that, as of August 27, the start of the Respondent's normal operations on the first day of school for the Suffield Public Schools, the Union represented a majority of the Respondent's employees.

Even assuming, arguendo, that the four Stafford Springs drivers are included in the unit, the total number of employees would be 31. Inasmuch as 16 of those 31 drivers were formerly employed by First Student, the Union would still be the majority representative of the Respondent's employees.

I accordingly find and conclude that the Respondent was obligated to recognize and bargain with the Union on August 27. Inasmuch as the Union's July 19 demand for bargaining is continuing, the Respondent violated the Act by refusing to bargain with it.

### 35 E. The Discharges of Eheander and Nadeau

The complaint alleges that the Respondent unlawfully refused to hire First Student shop stewards Eheander and Nadeau because they joined and assisted the Union and engaged in concerted activities and to discourage other employees from engaging in these activities.

Their refusals to hire were not alleged or tried based on an alleged plan by the Respondent to avoid a bargaining obligation.

45 While a successor employer is not obligated to hire the predecessor's employees, it may not discriminate against those employees on the basis of antiunion animus. *Howard Johnson Co. v. Detroit Executive Board, Hotel & Restaurant Employees*, 417 U.S. 249, 262 fn. 8 (1974). In a refusal-to-hire case involving a successorship, the applicable legal standards are

50 <sup>11</sup> It is undisputed that these 27 employees were the only drivers in the unit employed as of the first day of work, August 27. G.C. Exhibit 8.

prescribed in *Wright Line*, as approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). *Downtown Hartford YMCA*, 349 NLRB 960, 960 (2007); *Planned Building Services*, 347 NLRB 670, 673 (2006).

5 To establish a violation of Section 8(a)(3) under *Wright Line* where a refusal to hire is alleged in a successorship context, the General Counsel has the burden of showing that the employer failed to hire employees of its predecessor and was motivated by antiunion animus. He must show the Respondent's knowledge of the employees' union activities and antiunion animus. *Planned Building Services*, above. Once the General Counsel has made this showing,  
10 the burden shifts to the employer to demonstrate that it would not have hired the predecessor's employees even in the absence of their union activities.

As set forth above, it was stipulated that the Respondent did not refuse to hire any First Student employee based on the individual's driving record. As testified by the Respondent's  
15 managers, all the drivers interviewed were qualified to operate its school buses.

It is undisputed that Collins knew when he interviewed Eheander and Nadeau that they were stewards at First Student. In addition, Collins admitted being told by interviewee DiFranco that he did not like the Union because Eheander and Nadeau were "aggressive" and he  
20 believed that they were trying to "run the company."

The qualifications presented by Eheander and Nadeau at the time they were interviewed were impeccable. They satisfied the most important criteria required by the Employer: They  
25 knew and drove the Suffield routes, Eheander, for 11 years, Nadeau for 4. They were familiar with the children, students and school personnel. They were air brake certified, had no positive drug tests, and had good attendance. They were unquestionably highly qualified to work for the Respondent.

"Consistency" and a "smooth transition" being most important to Collins, there was no  
30 reason why these experienced drivers should not have been hired. Indeed, Collins wrote "L" on her interview sheet, indicating that he liked her. Significantly, every former First Student whose application was marked "L" was hired, except Eheander.

The decisions not to hire both stewards related to their expressed dislike of First Student  
35 manager Connor. At the time of their interviews and rejections one month later in early June, Collins had hired Connor as the Employer's dispatcher, and understandably did not want to hire employees who could not work well with her.

However, by the end of June, Collins knew that Connor had withdrawn her acceptance  
40 of the position. Accordingly, the reason for Collins' refusal to hire Eheander and Nadeau no longer existed. Instead, the Respondent interviewed other applicants including those who had never worked for the Respondent, those who had limited driving experience, and those who had never driven the Suffield school routes.

45 Further, Collins testified that he would disqualify any applicant who disliked Connor. However, he hired DiFranco who told Collins that the thing he most disliked about his job was "Becky Connor."

In addition, employees Dulude, Delaney, Coburn, Salisbury and Shaw, who were  
50 rejected after their interviews in early May, were re-interviewed and offered employment in July.

As to Coburn, the Respondent hired him despite a reference check which stated that he

lied to his prior employer about hitting two buses. Collins rationalized his hire of Coburn on the ground that Coburn had not lied to him. If that is the case, why ask for a reference? Collins answered that question by testifying that he was required to obtain a reference from a prior employer. To ask for a reference and then ignore a poor reference, especially from a driver of school children who allegedly was in an accident while driving a bus, causes one to question Collins' credibility.

It must also be noted that the Respondent offered employment to 22 former First Student drivers, ultimately rejecting only four of them, including Eheander and Nadeau. In addition, it hired drivers Dew and DiFranco and offered a job to Siskos, all of whom told the interviewers that they did not like the Union. It also offered employment to Shaw, who was the only employee identified by school administrator Basile as someone that Collins should not hire.

In *Grane Healthcare Co.*, 357 NLRB No. 123, slip op. at 21 (2011), in finding a violation in the employer's refusal to hire union officers compared to other employees, the judge, affirmed by the Board noted that 80% of the predecessor's employees were hired, but the leadership of the union, the four union officers were not hired – "the leadership of the union was - completely disproportionately to the high rate of hiring of the general workforce – rejected for employment." "The grossly disproportionate refusal to hire these local union officers is evidence in support of the General Counsel's affirmative case that discrimination played some role in the failure to hire the discriminatees. *Holding Co.*, 231 NLRB 383, 390 (1977) (disproportionate number of union adherents discharged is evidence of discrimination); *American Wire Products*, 313 NLRB 989, 994 (1994) ("the Board and the courts have long held that, absent a reasonable explanation, the disproportion between the number of union and nonunion employees laid off or discharged may be persuasive evidence of discrimination"); *Baker Mfg.*, 269 NLRB 794, 816 (1984) ("Such a lopsided percentage favoring layoff/termination of only union supporters is indicative of an unlawful motivation and has been so recognized by the Board and the courts"), enf'd. in relevant part 759 F.2d 1219 (5th Cir. 1985).

When it rejected Eheander and Nadeau for employment, the Respondent abandoned its stated objectives of hiring the most qualified drivers – those with experience driving the Suffield routes. The two drivers have a combined 15 years of such experience, yet were not offered employment or hired. By not hiring Nadeau, the Employer also ignored its emphasis on hiring the least senior employees in order to save money as Nadeau was low on the First Student seniority list.

I agree with the General Counsel that the Respondent was committed, by its contract bid, to provide preferential hiring to the First Student applicants. Collins stated that the preferential hiring clause required him simply to "consider them first."

It is true that Collins considered Eheander and Nadeau first, by interviewing them in the first group of applicants. However, the clause states that the Employer had to provide preferential hiring, not preferential interviewing or preferential consideration, to those who meet the Employer's employment requirements. There has been no showing that the two stewards did not meet those requirements. As set forth above, they met, and indeed exceeded all the qualifications required by the Respondent of drivers for the Suffield routes.

Their only disqualifying characteristic was their activities in behalf of the Union which were known to the Employer. It took pains not to hire them when the reasons for their disqualification, a dislike of Connor, evaporated. That, combined with the hire of other less qualified and less experienced drivers, and the other factors set forth above, compels the conclusion that the reason for their refusal to be hired was the Respondent's animus toward



their union activities.

I find that the General Counsel has established that the union activities of Eheander and Nadeau was a motivating factor in the refusal of the Respondent to hire them. Once that threshold is met, the burden shifts to the Respondent to prove that it would have refused to hire them even in the absence of their union activities. *Wright Line*, above. The Respondent must show not just that it could have refused to hire them, but that it would have done so even in the absence of their union activities. *Avondale Industries*, 326 NLRB 1064, 1066 (1999).

The Respondent's defense that it refused to hire Eheander and Nadeau because of their dislike of Connor and inability to work with her is completely undermined by two facts. First, that Connor had withdrawn her acceptance of the job as dispatcher one month before school opened, at a time when the Employer was continuing to interview applicants, including outside applicants with none of the outstanding qualifications of the two stewards. Second, that the Employer hired DiFranco who also commented that he did not like Connor.

Further, the Respondent's antiunion animus is clear. Collins remarked to Nadeau that he did not need a Union at the facility, and he believed that she had a "problem with management in general." Collins' remark to Nadeau, who he knew to be a union steward, made it clear that he neither needed the union, and, by implication, the persons who represented it.

In addition, in Nadeau's case, Collins ignored his stated goal of hiring the least senior drivers among the First Student employees. Nadeau was among the lowest on the seniority list but he did not select her for hire.

The Respondent's managers expressed a preference that its employees be "team players" who could get along with management, "fit into our program," and "conform to the way the [Employer] did things... and be willing to learn new policies, procedures and, perhaps, new rules."

Of course, there is nothing unlawful about management's desire to employ workers who share these characteristics. But it is unlawful to refuse to hire an applicant because of her union activities. Collins, being informed by DiFranco that Eheander and Nadeau were aggressive and sought to run the company, appears to have deliberately and purposefully avoided hiring the obviously qualified stewards.

In the absence of any valid reason for its refusal to hire them, I find that the Respondent believed that the two stewards would not necessarily be "team players," and would not necessarily "conform" to the Respondent's program, but would instead question or oppose its "new policies, procedures and rules." In so doing they could be expected to engage in union activities as former shop stewards. Thus, for the above reasons I find that the Respondent refused to hire them because of their activities protected by the Act.

I find that the Respondent has not proven that it would have refused to hire Eheander and Nadeau even absent their union activities. I accordingly find and conclude that the Respondent violated Section 8(a)(3) and (1) by refusing to hire them.

## F. Right to Set Initial Terms of Employment

When the Respondent commenced operations at the Suffield facility, it implemented new terms and conditions of employment for the drivers. As set forth above, it paid the same wages to the former First Student drivers, but instituted a new set of wages for other drivers, which was

different than that set forth in the First Student collective-bargaining agreement. In addition, the benefits provided differed from those enjoyed by the former First Student employees under the collective-bargaining agreement with the Union.

5 The General Counsel, in his brief, correctly states that a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor. *NLRB v. Burns Security Services*, 406 U.S. 272, 294 (1972). However, he argues that the Respondent lost that privilege when it refused to hire the two shop stewards in order to avoid its bargaining obligation. *Galloway School Lines, Inc.*, 321 NLRB 1422, 1427 (1996).

10 I cannot agree with this argument. There was no evidence that the Respondent engaged in a discriminatory hiring scheme to avoid becoming the successor of First Student. In fact, Collins generally sought to hire the First Student employees since those familiar with the Suffield routes were highly valued. This undermines the General Counsel's theory that the  
15 Respondent engaged in a hiring scheme to avoid hiring a majority of First Student's drivers. In fact, the Respondent did hire a very large number of those drivers, resulting in a majority being hired, even though the two stewards were not hired.

20 Further, I cannot find that the Respondent is a "perfectly clear" successor to First Student. Under *Burns*, above, at 294-295, a successor employer is free to set the initial terms on which it will hire its predecessor's employees without first bargaining with an incumbent union, unless it is "perfectly clear" that the successor "plans to retain all" of the unit employees. *Spruce Up Corp.*, 209 NLRB 194 (1974); *Fremont Ford*, 289 NLRB 1290 (1988). Here, it cannot  
25 be said that the Respondent intended to hire all, or even a majority of First Student's unit employees. The Employer made no announcement to the applicants concerning its plans to hire any of them, it interviewed the applicants separately and made individual decisions on their hire.

I accordingly find and conclude that the Respondent was free to set the initial terms on which it hired the employees it did. However, as the successor employer to First Student, the  
30 Respondent is required to bargain with the Union.

### Conclusions of Law

35 1. By refusing to hire Deborah Eheander and Peggy Nadeau because of their union membership and activities, the Respondent violated Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

40 All regular School Bus Drivers, Spare Drivers and Trainers employed by the Employer at its facilities located in Suffield, Connecticut, excluding all office, clerical and maintenance employees, dispatchers, casuals, managers and supervisors as  
45 defined in the Act.

3. The Respondent is a successor employer to First Student, Inc.'s facility in Suffield, Connecticut.

50 4. By failing and refusing to recognize and bargain with United Food and Commercial Workers Union, Local 1459, as the exclusive collective-bargaining representative of the above -

described unit, the Respondent violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily refused to hire Deborah Eheander and Peggy Nadeau, it must offer them instatement to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. Further, I shall recommend that the Respondent make them whole for any loss of earnings and other benefits suffered as a result of discrimination against them.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No 8 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v NLRB*, 647 F.3d 1137 (D.C. Cir. 2011). In accord with *Tortillas Dan Chavas*, 361 NLRB No.10 (2014), my recommended Order also requires the Respondent to (1) submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Eheander and Nadeau, it will be allocated to the appropriate calendar quarters, and/or (2) reimburse them for any additional Federal and State income taxes they may be assessed as a consequence of receiving a lump-sum backpay award covering more than 1 calendar year.

In accordance with the Board's decision in *J. Piccini Flooring*, 356 NLRB No. 9, slip op. at. 5-6 (2010), I shall recommend that the Respondent be required to distribute the attached notice to members and employees electronically, if it is customary for the Respondent to communicate with employees and members in that manner. Also in accordance with that decision, the question as to whether a particular type of electronic notice is appropriate should be resolved at the compliance stage. *J. Piccini Flooring*, above, slip op. at 3. See *Teamsters Local 25*, 358 NLRB No. 15 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

### ORDER

The Respondent, M & J Bus, Inc., Suffield, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Refusing to hire former employees of First Student or an employees because they engaged in union activities.

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<sup>12</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Failing and refusing to recognize and bargain with United Food and Commercial Workers Union, Local 1459 as the exclusive collective-bargaining representative of the employees in the following unit:

5

All regular School Bus Drivers, Spare Drivers and Trainers employed by the Employer at its facilities located in Suffield, Connecticut, excluding all office, clerical and maintenance employees, dispatchers, casuals, managers and supervisors as defined in the Act.

10

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

15

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

20

All regular School Bus Drivers, Spare Drivers and Trainers employed by the Employer at its facilities located in Suffield, Connecticut, excluding all office, clerical and maintenance employees, dispatchers, casuals, managers and supervisors as defined in the Act.

25

(b) Within 14 days from the date of the Board's Order, offer Deborah Eheander and Peggy Nadeau full instatement to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

30

(c) Make Deborah Eheander and Peggy Nadeau whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

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(d) Within 14 days after service by the Region, post at its facility in Suffield, Connecticut, copies of the attached notice marked "Appendix." <sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the

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<sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the national Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 7, 2013.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 19, 2014

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Steven Davis  
Administrative Law Judge

**APPENDIX**

**NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT refuse to recognize and bargain with United Food and Commercial Workers Union, Local 1459 as your exclusive collective-bargaining representative in the following unit:

All regular School Bus Drivers, Spare Drivers and Trainers employed by the Employer at its facilities located in Suffield, Connecticut, excluding all office, clerical and maintenance employees, dispatchers, casuals, managers and supervisors as defined in the Act.

WE WILL NOT refuse to hire former employees of First Student or any employees because of their union membership or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL recognize and bargain with the Union as your exclusive representative in the above appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL within 14 days from the date of the Board's Order, offer Deborah Eheander and Peggy Nadeau full instatement to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

WE WILL make Deborah Eheander and Peggy Nadeau whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

M & J BUS, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601

Boston, Massachusetts 02222-1072

Hours of Operation: 8:30 a.m. to 5 p.m.

617-565-6700.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/01-CA-110383](http://www.nlr.gov/case/01-CA-110383) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.